HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No.1309 of 2005
Date of decision : 15.01.2007

Gram Panchayat, Vill.Paharipur .....Petitioner
versus
Didar Singh .....Respondent

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.S.S.Walia, Advocate for the petitioner
Mr.Atul Jain, Advocate for the respondent

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ORDER

HEMANT GUPTA, J. (Oral)

The challenge in the present revision petition is to the order dated 20.1.2005, passed by the learned First Appellate Court, whereby application for condonation of delay of 49 days in filing the appeal against the order of the learned trial Court refusing to set-aside the ex-parte judgment and decree, was dismissed.

The suit of the plaintiff-respondent was decreed ex-parte on 12.4.1996. To set-aside the said ex-parte judgment and decree, an application was filed which was dismissed by the learned trial Court. An appeal against the said order was filed alongwith an application for condonation of delay of 49 days in filing the appeal which has since been dismissed vide order impugned in the present revision petition.

It is the case of the petitioner that on account of illness of his wife, he could not file the appeal in time. To prove the said fact, he appeared as his own witness as AW-1 and examined Dr.Anil Sharma as AW-2. The learned First Appellate Court disbelieved the stand of the petitioner as inter-alia it was found that the treatment of the wife of the

petitioner continued even beyond 1.3.2004 and that the petitioner was getting the treatment from a Homeopathic Doctor.

But the facts remains that the delay of 49 days is not such delay on the basis of which one can draw an inference that the petitioner has given up his right to challenge the order passed by the learned trial Court. Merely negligence in filing the appeal within the period of limitation cannot be said to be lack of sufficient cause to condone the delay. The Hon'ble Supreme Court of India in **N.Balakrishanan versus Krishnamurthy, A.I.R. 1998 S.C.-3222,** has held to the following effect;

> "It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of malafides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should lean against acceptance of the explanation."

Consequently, the present revision petition is allowed. The order passed by the First Appellate Court, dated 20.1.2005 is set-aside. The delay of 49 days in filing the appeal is condoned. The First Appellate Court shall decide the appeal expeditiously, in accordance with law.

Parties through their counsel are directed to appear before the learned First Appellate Court on 19.2.2007 for further proceedings.

(HEMANT GUPTA)
JUDGE

January 15, 2007

**mohinder*